

From: Mark Alexander
To: Microsoft ATR,microsoftcomments@doj.ca.gov@inetgw,...
Date: 12/2/01 3:19pm
Subject: My comments about the Microsoft Antitrust Settlement

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OVERVIEW:

This email is in regards to the Revised Proposed Final Judgement (Settlement) for the case of US v Microsoft (98-1232) and NY et al v Microsoft. (98-1233) It is a list of specific defects in the proposal as well as other areas that need to be addressed for a comprehensive solution.

The computer industry, especially the software industry, used to be a very vibrant exciting space with a large number of competing technologies and solutions. Microsoft has become a dominant player in this space by multiple methods. The fact that Microsoft is persistent and keeps on trying even after a product is not well received is a strength of Microsoft that others should emulate. The fact the Microsoft believes that to compete it needs to "cut off the air supply" of potential competitors is a method that should be eliminated.

PERSONAL INFORMATION:

My name is Mark Alexander. I am a US citizen residing at 46 Lynwood Rd in Scarsdale, NY. My email address is malexander@acm.org. I have been working in the computer field for over 20 years. I currently work as a Senior Information Technology Architect for General Electric Card Services, the private label credit card business of GE Capital in Stamford, CT. The opinions expressed in this email are my own personal opinions and not those of GE. I currently own stock in a variety of technology companies including Microsoft.

OVERALL:

- 1) The proposed settlement does not appear to be the complete agreement between the parties. From comments made by some of the State Attorney Generals about this settlement, it appears that an agreement not documented in the current proposed settlement has been made. The comments are that Microsoft will reimburse the states for their legal fees incurred during the course of this proceeding. Since the agreement seems very one sided to the advantage of Microsoft, a large number of individuals believe that some additional secret agreement has been reached. The best way to resolve this is to add wording to the settlement that states it is the complete agreement between the parties and add the sentence about the reimbursement of legal fees.
- 2) Microsoft has been found guilty of being a Monopoly by the District Court that was upheld by the Appeals Court, yet to date, Microsoft has refused to admit to its guilt. The settlement should include an admission of guilt on the part of Microsoft.
- 3) The settlement does not include any penalty for past and current activities that were and are still in violation of the law.
- 4) The primary beneficiary of the settlement, other than Microsoft, is the OEM rather than the consumer.
- 5) Microsoft has always been very innovative in how to work around or by a very technical reading of prior legal decisions and this settlement should be very carefully vetted to eliminate loopholes and areas that are open for an interpretation by Microsoft that is not the intent of the settlement by the DOJ and States.

SECTION BY SECTION COMMENTS:

- III - A - 2: Should allow an OEM to ship a PC without any Microsoft Operating System. Microsoft has in the past had licenses that charged an OEM for each PC sold, regardless of OS installed.
- III - B - 3 - a: Should allow for 21st and lower largest OEM.
- III - C - 3: GUI of similar size and shape will limit 3rd party products ability to

innovate and add value for users with their product.

III - D: Limiting API disclosure to just Middleware does not provide a fair, even playing field. Microsoft also needs to disclose APIs for the base Windows Operating System product. The settlement should state the any API of the Microsoft Windows Operating System used either by a Microsoft Middleware or Microsoft

Application should be publicly released.

III - D: Timing of release of Middleware API documentation should occur prior to last major beta release, it should occur at initial beta release and then be updated as needed during beta cycle. The APIs need to be

released to public no later than they are released to other internal groups within Microsoft. Releasing it at the last beta release gives Microsoft a huge competitive advantage to incorporate those APIs into other areas or products for release simultaneously with the Middleware solution. Also, since Microsoft controls the release schedule for the beta releases and the final product, it can release the last beta just moments before the final release. See Overall 5 above, Microsoft will always work for its own advantage and to the detriment of other parties.

III - D: API disclosure for new Windows Operating System product "Timely Manner" should be defined as per above.

III - E - ii: Need to add Used to interoperate natively or in conjunction with a Microsoft Middleware product to a Windows Operating System or Microsoft Server Operating System. It is important to include any PC to PC protocols as well as PC to server protocols, used both natively by the OS and added by any Microsoft Middleware solution.

III - H - 3: Need a section 4 that Microsoft does not alter an End User change as well.

III - H - 1 (After Notwithstanding): Need to add if 3rd party Middleware is installed and fails to perform operation, then and only then can Microsoft Middleware be used. The Microsoft Middleware should allow connections to an end user or OEM specified server, which may be the Microsoft server or that of some 3rd party.

III - H - 2 (After Notwithstanding): The end user should be the party to determine whether to change the Middleware in use or just to get an error message. It is inappropriate for Microsoft to make technical decisions about requirements for 3rd party products because it is too easy for them to abuse the power.

III - H (Microsoft's Obligations): See III - D above.

III - I - 5: No license of Intellectual Property from Microsoft should require a license of 3rd Party Intellectual Property to Microsoft.

III - J - 1 - a: Security software of anti-piracy, anti-virus, software licensing, digital rights management, encryption and authorizations is a very active and competitive market. This section is worded in such way as to allow Microsoft to keep all information regarding these activity private. The intent implied in the Competitive Impact Statement is to limit access to the internals of Microsoft implementation. That should be limited, but APIs and Communication Protocols for these areas should not be different than other parts of

Windows product or Middleware information requirements.

III - J - 1 - b: This paragraph sounds like a big brother type deal between government and Microsoft to suppress information from public. Should be eliminated.

III - J - 2 - c: Microsoft should not determine viability of a business. If needed, it should be determined by a 3rd party based on either court or government provided guidelines. Also needs to allow for individuals and organizations, not just businesses.

IV - B - 3: Microsoft should not select any member of the TC. Microsoft should solely be allowed to object to the selection of a TC member as outlined in IV - 2.

IV - B - 10: New paragraph of Either the TC members or the Plaintiffs or the Court will release every six months to the public a summary of all violations, recommended actions and actual actions performed by Microsoft to remedy said violations. This public disclosure will not include any proprietary information of Microsoft or of any complainant, including name of complainant, without prior written permission of the party to disclose that information.

IV - D - 4 - d: The TC or work of the TC may be admitted in a legal proceeding with the consent of at least one of the Plaintiffs or the Court.

IV - D - 4: Missing section on Penalties for violations that are not resolved using Voluntary Resolution are to be addressed by the Court. Without any penalty or even a method to address penalty for violations leaves the Plaintiffs with no recourse other than a whole new lawsuit with attendant time and expense. It is critical that any violation of this agreement be immediately able to have penalty hearings in court.

V - B: The only penalty specified in this entire agreement for violations of this agreement is to extend the agreement for 2 more years. Since there is no penalty for any violation as currently outlined in the settlement, extending this settlement merely allows Microsoft a longer period of time to continue its violations without penalty, basically ignoring this settlement and its intentions.

IV - A: API definition should include programmatic interface to Windows Operating System Product and not just Middleware.

IV - B: Communication Protocol is not for a predefined tasks, but rather for any type of data exchange between two or more computers or computing devices.

IV - D: Coverage for OEM should not be limited to just the largest volume 20, but should include all the smaller OEM who by nature of their size have less of a bargaining position with Microsoft to begin with and as a group represent a large portion of licenses sold.

IV - J - 2: Trademark requirement should be eliminated. Microsoft will simply stop Trademarking the name of its Middleware products to give it the ability to have them not covered by this settlement.

IV - J: Using version numbering is an easy way for Microsoft to work around this settlement. A better definition may be an upgrade is a release that provides new or improved functionality. It should be covered under this settlement. An update is solely a release to fix bugs and other defects.

IV - K - 2 - b - iii: see IV - J - 2 above.

IV - N - ii: There should be no limit on the number of copies required for a 3rd party product to be protected by this settlement. Setting a threshold of one million copies will allow Microsoft to squash any new 3rd party product prior to it reaching a critical mass of end user support and prevent it from ever reaching the one million to be covered under this settlement. If there is a need for a number, I would suggest a value of twenty-five thousand. It is large enough to indicate the beginnings of interest and still is small enough that the product would be below Microsoft's RADAR screen to notice it and work to

eliminate it.

IV - Q: An Intel processor is not a requirement for a system to be a Personal Computer. A Personal Computer with an Intel or compatible processor would be an Intel Compatible Personal Computer. IV - Q: Servers, set top box, handheld, game consoles, telephones, pagers and PDAs also need to be protected from Microsoft using its monopoly on Desktop Computers to allow it an un-fair advantage in these other markets.

IV -R: see III-D above.

ADDITIONAL CONDITIONS NOT INCLUDED IN PROPOSED SETTLEMENT:

1) Windows Operating System Product: Complete APIs for 3rd Party products to interact with the Windows

Operating System Product also need to be disclosed. No Microsoft Application or Middleware or Server product

should have access to an API that is not also available and documented to the ISV community as well.

2) Microsoft Applications: Microsoft has often used its dominance in the Application market as a threat as

well. It should therefore be required to make its Application File Formats available for licensing under

Reasonable and Non-discriminatory terms.

3) Microsoft Server Products: It should be required to make its Communication Protocol Formats available for

licensing under Reasonable and Non-discriminatory terms.

4) Microsoft Network Services: It should be required to make its Communication Protocol Formats available for

licensing under Reasonable and Non-discriminatory terms.

I believe these changes would allow Microsoft to still be a vibrant part of the economy, the software industry and business community as a whole, while allowing for other companies to compete with Microsoft on a more level playing field. The field cannot be made completely level due to the financial and marketing strength of Microsoft. I believe that if Microsoft competed solely on the Merits of its products rather than using them as a tool to destroy other products, they would still be an ongoing success.

Sincerely,
Mark Alexander

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Mark Alexander !

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